

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

JULIE A. SU, Acting Secretary of Labor,)	
United States Department of Labor, ¹)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 8:22-cv-300
)	
NEBRASKA CARE, L.L.C. and HELEN)	
BERNBECK,)	
)	
Defendants.)	
)	

CONSENT ORDER AND JUDGMENT

Plaintiff Julie A. Su, Acting Secretary of Labor, United States Department of Labor (“Plaintiff” or “Acting Secretary”), having filed a complaint under the Fair Labor Standards Act of 1938 as amended (29 U.S.C. § 201 *et seq.*) (“FLSA”), and Defendants Nebraska Care, L.L.C. and Helen Bernbeck, individually, (collectively “Defendants”) having appeared by counsel and answered, agree to the entry of this Consent Order and Judgment without contest.

Defendants admit and the Court finds Defendants are engaged in related activities performed through unified operation or common control for a common business purpose and are an “enterprise” under 29 U.S.C. § 203(r) of the FLSA.

Defendants admit and the Court finds Defendants are an enterprise engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. § 203(1)(A) of the FLSA.

¹ This action was commenced in the name of Martin J. Walsh, Secretary of Labor, United States Department of Labor. Mr. Walsh is now the former Secretary of Labor and Julie A. Su is now the Acting Secretary. Therefore, Ms. Su is being automatically substituted for Mr. Walsh as the Plaintiff, pursuant to Fed. R. Civ. P. 25(d), and the caption of this action is amended accordingly.

Defendants admit and the Court finds Defendants are employers as defined in 29 U.S.C. § 203(d) of the FLSA.

Upon motion of the Acting Secretary, and for cause shown, it is:

ORDERED, ADJUDGED, AND DECREED, pursuant to section 217 of the FLSA that Defendants, their officers, agents, servants, and all persons acting or claiming to act on their behalf and interest be, and they hereby are, permanently enjoined and restrained from violating the provisions of sections 207, 211, 215(a)(2), 215(a)(3), and 215(a)(5) of the FLSA, in any of the following manners:

1. Defendants shall not, contrary to 29 U.S.C. §§ 207 and 215(a)(2), employ any of their employees including, but not limited to, any of their employees working at Nebraska Care, L.L.C., or any business owned, operated and/or controlled by Defendants at which their employees perform work, in any workweek when they are engaged in commerce or employed in an enterprise engaged in commerce, within the meaning of the FLSA, for workweeks longer than forty hours, unless said non-exempt employees receive compensation for their employment in excess of forty hours at a rate equivalent to one and one-half times the regular rate at which they are employed.

2. Defendants shall make, keep, and preserve adequate records of their employees and of the wages, hours, and other conditions and practices of employment maintained by them including, but not limited to, any of their employees working at Nebraska Care, L.L.C., or at any business location owned, operated, and/or controlled by Defendants, and at any other business location at which their employees perform work, as prescribed by the Regulations issued pursuant to 29 U.S.C. §§ 211(c) and 215(a)(5) and found at 29 C.F.R. Part 516. Defendants shall make such records available at all reasonable times to representatives of the Plaintiff.

3. Pursuant to 29 U.S.C. § 215(a)(3), Defendants shall not discharge or take any retaliatory action against any of their employees because the employee engages in protected activity under the FLSA, and specifically section 215(a)(3) of the FLSA.

FURTHER, JUDGMENT IS HEREBY ENTERED, pursuant to section 216(c) of the FLSA, in favor of the Acting Secretary and against Defendants in the total amount of \$44,181.84, to be paid in accordance with the paragraphs below.

4. The Acting Secretary shall recover from Defendants the sum of \$22,090.92 in unpaid overtime compensation covering the period from November 14, 2019 through November 14, 2021, for Defendants' current and former employees whose names are listed in the attached Exhibit A, and the additional sum of \$22,090.92 in liquidated damages.

a. Within ninety (90) days of the entry of this Consent Order and Judgment, Defendants shall deliver payment in the amount of \$44,181.84 by either (i) delivering a certified or cashier's check payable to "Wage and Hour – Labor" and sent to the U.S. Department of Labor, Wage and Hour Division, Midwest Region, P.O. Box 2638, Chicago, Illinois, or (ii) paying online via ACH transfer, credit card, debit card, or digital wallet at <https://www.pay.gov/public/form/start/77692637> or www.pay.gov and searching "WHD Back Wage Payment – Midwest Region." All checks and online payments, in the "BW Case Number" field, must include a reference to Case ID# 194999.

b. Defendants shall also furnish to the Acting Secretary the full name, last-known address, last-known phone number, and social security number for each employee named in Exhibit A.

c. Upon receipt of full payment from Defendants, representatives of the Acting Secretary shall distribute such amounts, less appropriate deductions for federal

income withholding taxes and the employee's share of the social security (F.I.C.A.) tax, to the employees or their legal representative as their interests may appear, in accordance with the provisions of section 216(c) of the FLSA. Defendants remain responsible for the employer's share of F.I.C.A. arising from or related to the back wages distributed by the Acting Secretary.

d. Neither Defendants nor anyone on their behalf shall directly or indirectly solicit or accept the return or refusal of any sums paid under this Consent Order and Judgment. Any such amount shall be immediately paid to the Acting Secretary for deposit as above, and Defendants shall have no further obligations with respect to such returned monies.

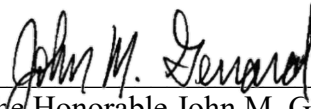
e. Any monies not disbursed by the Department of Labor after three years from the date of payment by Defendants, because of the inability to locate the proper persons or because of their refusal to accept payment, shall be deposited into the Treasury of the United States as miscellaneous receipts, pursuant to section 216(c) of the FLSA.

f. The provisions of this Consent Order and Judgment shall not in any way affect any legal right of any individual not named on Exhibit A, nor shall the provisions in any way affect any legal right of any individual named on Exhibit A to file any action against Defendants for any violations alleged to have occurred outside the relevant period.

5. By entering into this Consent Order and Judgment, Plaintiff does not waive her right to conduct future investigations of Defendants under the provisions of the FLSA and to take appropriate enforcement action, including assessment of civil money penalties pursuant to 29 U.S.C. § 216(e), with respect to any violations disclosed by such investigations.

It is FURTHER ORDERED that each party shall bear their own costs, fees and other expenses incurred by such party in connection with any stage of this proceeding, but not limited to, attorney fees which may be available under the Equal Access to Justice Act, as amended.

Dated this 9th day of January, 2024.



The Honorable John M. Gerrard
Senior United States District Judge

Entry of this judgment
is hereby consented to:



Patrick J. Barrett (#17246)
Attorney

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Attorney for Defendants



Helen Bernbeck
Owner/Individually

NEBRASKA CARE, L.L.C.
915 East Omaha Avenue, Suite 5
Norfolk, NE 68701
(402) 371-5400

Defendants

APPROVED:

SEEMA NANDA
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

EVERT H. VAN WIJK
Associate Regional Solicitor



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Attorneys for Plaintiff Julie A. Su, Acting
Secretary of Labor, United States Department
of Labor

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EXHIBIT A

- 1. BrieAnn Colfack
- 2. Brittanie Iwan
- 3. Ann VanDiest
- 4. Ashley Walz
- 5. Amber Wragge
- 6. Dee Dee Yawn